


Public Hearing

MEMORANDUM

September 6, 2007

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Public Hearing – Zoning Text Amendment 07-10, CBD Zone Revisions

Zoning Text Amendment (ZTA) 07-10, sponsored by the District Council at the request of the Planning Board and Councilmember Floreen, was introduced on July 31, 2007. The Woodmont Triangle Sector Plan recommended optional method of development projects on any size parcel and the option of a payment instead of requiring on-site public use space or public facilities, and amenities. ZTA 07-10 would change the Zoning Ordinance to allow a payment instead of fulfilling the public use space or public facilities and amenities requirement on-site. The ZTA provides a general approach to determine the amount of any such payment. The detailed method to determine the amount of payment required is proposed to be found in Planning Board regulations. ZTA 07-10 would also allow the provision of off-site public use space.

ZTA 07-10 also proposes to enhance arts and entertainment districts by allowing the space provided to an arts and entertainment entity to be counted as public use space. The ZTA as proposed requires the Planning Board to accept arts and entertainment space as public use and excludes that space from the calculation of the maximum floor area allowed by the zone. In all other situations the Planning Board has discretion to accept or reject proposed public use space.

In addition, ZTA 07-10 would generally amend the CBD zones by:

- revising definitions for the terms “public use space” and “public facilities and amenities”;
- defining the term “arts and entertainment entity”;
- revising provisions for a transfer of public use space in certain overlay zones;
- revising requirements and standards for the approval of a project plan; and
- clarifying the text of the CBD zones.

A worksession by the Planning, Housing, and Economic Development Committee on ZTA 07-10 is tentatively scheduled for September 24, 2007.

Zoning Text Amendment No: 07-10
Concerning: CBD Zone Revisions
Draft No. & Date: 3 - 7/24/2007
Introduced: July 31, 2007
Public Hearing: 9/11/07; 1:30 p.m.
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: District Council at the request of the Planning Board and Councilmember Floreen

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- define the term "Arts or entertainment entity";
- revise definitions for the terms "Public use space" and "Public facilities and amenities";
- provide flexibility for certain CBD zoned projects to satisfy a public use space, public facility, or amenity requirement;
- revise provisions for a transfer of public use space in certain overlay zones;
- establish standards and procedures for an optional method project to make a payment instead of providing any public use space, public facility, or amenity on-site;
- revise requirements and standards for approval of a project plan; and
- generally amend the CBD zones.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-2	"DEFINITIONS AND INTERPRETATION"
Section 59-A-2.1	"DEFINITIONS"
DIVISION 59-C-6	"CENTRAL BUSINESS DISTRICT ZONES"
Section 59-C-6.215	"Methods of development and approval procedures"
Section 59-C-6.233	"Minimum Public Use Space (percent of net lot area)"
Section 59-C-6.234	"Maximum Density of Development"
DIVISION 59-C-18	"OVERLAY ZONES"
Section 59-C-18.19	"Fenton Village Overlay Zone"
Section 59-18.20	"Ripley/South Silver Spring Overlay Zone"
DIVISION 59-D-2	"PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT, CBD ZONES AND RMX ZONES"
Section 59-D-2.11	"Project plan required"
Section 59-D-2.12	"Contents of Project Plan"

Add the following new section:

Section 59-D-2.3.1	<u>“Procedure – Payment instead of providing public use space, public facilities, or amenities on-site”</u>
Section 59-D-2.42	“Findings required for approval”
Section 59-D-2.43	“Basis for consideration”

EXPLANATION: ***Boldface** indicates a heading or a defined term.*
Underlining indicates text that is added to existing laws by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-A-2 is amended as follows:

DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

59-A-2.1. Definitions.

* * *

Arts or entertainment entity. A publicly or privately owned and operated entity located in a state approved Arts and Entertainment District under Article 83A, Section 4-701 of the Annotated Code of Maryland, and dedicated to one of the following visual or performing arts:

(1) Live performance of music, theater, or dance; or

(2) The production of art, fine crafts, digital imagery, or film.

* * *

Public facilities and amenities: Those facilities and amenities of a type and scale necessary to provide an appropriate environment or to satisfy public needs resulting from the development of a particular project. Facilities and amenities may include, but are not limited [to,] to:

(a) green area or open space which exceeds the minimum required, with appropriate landscaping and pedestrian circulation;

(b) streetscaping that includes elements such as [street] plantings, special pavers, [furniture,] bus shelters, benches, and decorative lighting;

(c) [Provision of] public space [with commitment] designed for [public] performances, [and] events, vending, [and] or recreation; [and finally,]

(d) new or improved pedestrian walkways, tunnels or bridges;

(e) features that improve pedestrian access to transit stations; and

(f) dedicated [uses] spaces open to the public such as museums, art galleries, cultural arts centers, community rooms, and recreation areas.

[Facilities] Public facilities and amenities may be recommended or identified [on] in an approved and adopted master or sector plan. Public amenities do not include

road improvements or other capital projects that are required to provide adequate facilities to serve the property.

Public use space: Space [required by the sector plan and other space such] devoted to [such uses as space for] public enjoyment, [consisting of] such [things] as, but not limited to green areas, gardens, [malls,] plazas, walks, pathways, promenades, arcades, urban parks, town squares, public plazas with elements such as water features, and [; lawns, fountains, decorative plantings,] passive [or] and active recreational areas. [Such] Public use space may also consist of space and/or amenities recommended by an approved urban renewal plan. [Such] Public use space [shall] must not include parking or maneuvering areas for vehicles. [Area devoted to this purpose shall] Public use space must be easily and readily accessible to the public [without restrictions to particular segments of the public] and be identified by a sign placed in public view. [In areas where] If public pedestrian walkways are [shown on] recommended in an approved and adopted master plan or sector plan, [such area within the percentage] they may be counted as [required for] public use space [as is necessary shall be devoted to the provision of pedestrian walkways or paths for general public use].

Sec. 2. DIVISION 59-C-6 is amended as follows:

DIVISION 59-C-6. CENTRAL BUSINESS DISTRICT ZONES.

* * *

59-C-6.215. Methods of development and approval procedures. Two methods of development are possible in each of these zones.

* * *

(b) Optional method. Under the optional method, greater densities may be permitted and there are fewer specific standards, but [certain public facilities and amenities must be provided by the developer] the developer must

provide certain public facilities and amenities. The presence of these facilities and amenities is intended to make possible the creation of an environment capable of supporting the greater densities and intensities of development permitted. The Planning Board may, under Division 59-D-2:
(1) authorize a payment instead of all or some of the required public facilities or amenities, or any required public use space, or (2) permit any required public use space to be provided off-site on private or public property in the same CBD.

If residential uses are included in a development, Moderately Priced Dwelling Units must be provided in accordance with Chapter 25A and Work Force Housing Units must be provided as required by Section 59-A-6.18 and Chapter 25B. The maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site. The procedure for approval of an optional method project is specified in Division 59-D-2, and the procedure for approval of a site plan is specified in Division 59-D-3.

* * *

59-C-6.23. Development Standards.

* * *

	CBD-0.5		CBD-R1 ²		CBD-1		CBD-2		CBD-3		CBD-R2	
	S ^[9]	0	S	0	S ^[9]	0	S ^[9]	0	S ^[9]	0	S	0
* * *												
59-C-6.233. Minimum Public Use Space (percent of net lot area): ^[15]	10	20	10	20 ¹⁶	10	20 ²⁰	10	20*	10	20	10	20
(a) Standard Method - The [required standard method] public use space requirement may be reduced to accommodate the construction of MPDUs, including any bonus density units, provided on- site to:	5		5		5		5		5		5	
(b) Optional Method - The [required optional method] public use space <u>requirement</u> may be [reduced or eliminated to accommodate the construction of MPDUs, including any bonus density units provided on- site, if an equivalent amount of public use space is provided off-site in the same CBD within a reasonable time] <u>provided in part or</u> <u>entirely off-site in</u> <u>the same CBD if</u> <u>approved under</u> <u>Division 59-D-2.</u> <u>A payment instead</u> <u>of all or some of the</u> <u>required public use</u> <u>space may be made</u> <u>if approved under</u> <u>Division 59-D-2.</u>												

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	CBD-0.5		CBD-R1		CBD-1		CBD-2		CBD-3		CBD-R2	
	S ^[9]	O	S	O	S ^[9]	O	S ^[9]	O	S ^[9]	O	S	O
59-C-6.234. Maximum Density of Development.												
(a) Standard method of development (see section 59-C-6.21(a))												
(i) For projects that are 100 percent residential (dwelling units per acre) (FAR)	35		43		43		80		120		120	
(ii) For [commercial] non- residential or mixed- use projects: Maximum permitted non-residential, including transient lodging (FAR) limited to:	0.5 ^{10,14}		1.0		1.0 ¹⁰		2.0 ¹⁰		3.0 ¹⁰		1.0 ¹⁸	
Total (FAR)¹⁵	1.0 ⁹		1.0		2.0 ⁹		3.0 ⁹		4.0 ⁹		[1] 2.0	
(b) Optional method of development (see section 59-C- 6.215(b): The [Planning Board may permit not more than the following densities, but in no case more than] density allowed must not exceed either the following densities or the density recommended by the applicable master plan or sector plan.												

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	CBD-0.5		CBD-R1		CBD-1		CBD-2		CBD-3		CBD-R2	
	S ^[9]	O	S	O	S ^[9]	O	S ^[9]	O	S ^[9]	O	S	O
[(1)] (i) For projects that are 100 percent [R]residential (dwelling units per acre):		100		125		125		200		200		200
[(2)] (ii) Nonresidential, including transient lodging (FAR):		1.0				2.0 ¹⁹		4.0		6.0		
[(3)] (iii) Mixed-use [residential and nonresidential.]												
- [Nonresidential, including transient lodging limited to (FAR)] <u>Maximum permitted non-residential, including transient lodging (FAR) limited to:</u>		1.0 ⁴		0.6 ⁷ , 17		2.0 ⁴		3.0 ⁵		5.0 ⁶		1.0 ^{3,1} 8
-Total FAR ^{13, 15}		1.5		3.0		3.0		5.0		8.0		5.0 ³
* * *												

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80 9. Additional density for housing purposes may be permitted so long as the degree of
81 nonconformity from the setback (59-C-6.231), lot coverage (59-C-6.232), and the public
82 open space (59-C-6.233) requirements are not increased. The maximum density [cannot]
83 must not exceed the density provisions for mixed-use projects in section (59-C-
84 6.234)(a)(ii).

85 * * *

86 15. The total FAR for mixed-use development may [may] be exceeded under the special
87 regulations of Sec. 59-C-6.2354.

88 * * *

89 * The optional method public use space requirement is satisfied if the applicant conveys to
90 the County an appropriate amount of land or building space for use by an arts or

entertainment entity that contributes to the revitalization of a Central Business District.
The gross floor area provided for the arts or entertainment entity may be excluded from
the gross floor area of the optional method project for the purpose of calculating density.

* * *

Sec. 3. Division 59-C-18 is amended as follows:

DIVISION 59-C-18. OVERLAY ZONES.

* * *

59-C18.19. Fenton Village Overlay Zone.

* * *

59-C-18.192. Regulations.

* * *

[(3) Allow the transfer of public use space to other properties within this overlay zone. The transfer of public use space must be shown on an approved project plan or site plan for both the property transferring the public use space and the property receiving the public use space in accordance with Division 59-D-2 and 59-D-3. The public use space may be transferred in accordance with an agreement as approved by the Montgomery County Planning Board.]

[(4)] (3) * * *

[(5)] (4) * * *

* * *

59-C18.20. Ripley/South Silver Spring Overlay Zone.

* * *

59-C-18.202. Regulations.

* * *

[(3) The transfer of public use space to other properties within the overlay zone is allowed and must be shown on an approved project plan or site plan for both the property transferring the public use space and the property receiving the public use space in accordance with Division 59-D-2 and 59-

D-3. The public use space may be transferred in accordance with an agreement as approved by the Montgomery County Planning Board.]

[(4)] (3) * * *

[(5)] (4) * * *

Sec. 5. Division 59-D-2 is amended as follows:

Division 59-D-2. PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT IN [,] CBD [ZONES], TOMX, AND RMX ZONES.

* * *

59-D-2.11. Project plan required.

[In order to] To ensure that the development will include the public facilities, amenities and other design features[,], that will create an environment capable of supporting the greater densities and intensities permitted by the optional method of development [,]; the developer [is required to] must submit a project plan as a part of the application for the use of the optional method. [; and] In addition the Planning Board must approve, a site plan [must be approved in accordance with the requirements of division] under Division 59-D-3 [prior to] before [the issuance of] any building permit is issued. The project plan must clearly indicate how it will satisfy [shall be such as would result in] the [stated] purposes and standards of the zone [applied for] . [, and the] The fact that a project complies with all of the stated general regulations, development standards or other specific requirements of the zone is [shall] not [, by itself, be deemed to] sufficient to create a presumption that the proposed development would be desirable, and is [shall] not [be] sufficient to require the approval of the project plan or [the granting of the] application.

59-D-2.12. Contents of project plan. The project plan must clearly indicate how the proposed development meets the standards and purposes of the applicable

146 zone. It must include the following, in addition to any other information [which]
147 the applicant considers necessary to support the application:

148 * * *

149 (e) A detailed statement describing [the manner in which] how the development
150 would conform to the [approved and adopted] master plan or sector plan and
151 the purposes of the applicable zone.

152 (f) A statement and analysis demonstrating [the manner in which] how the
153 development would result in a more efficient and desirable development
154 than could be accomplished [by the use of] under the standard method of
155 development.

156 (g) A development program [stating] specifying the sequence in which all
157 structures, public open spaces and amenity spaces, vehicular and pedestrian
158 circulation systems, and community recreational facilities [are to] may be
159 developed, and where they must be located.

160 * * *

161 (j) A detailed statement describing the intended use of any payment proposed to
162 be made instead of providing any public use space, public facility, or
163 amenity on-site. The statement must describe how the payment is consistent
164 with the objectives of the applicable master plan or sector plan and why the
165 proposed payment is more efficient and desirable than providing the public
166 use space, public facility, or amenity on-site.

167 (k) Any proposal to locate public use space off-site must identify the proposed
168 off-site location and phasing. The off-site location of the public use space
169 must be approved under an agreement approved by the Planning Board. A
170 phasing plan for implementation of the off-site public use space must be
171 submitted and approved by the Planning Board.

172 * * *

59-D-2.3. Same—Procedure.

* * *

59- D- 2.3.1 Procedure – Payment instead of providing public use space, or public facilities and amenities on-site.

The Planning Board may approve a payment instead of any required public use space, public facilities, or amenities on-site if the payment complies with the following conditions:

(a) Any payment accepted for public use space must be sufficient to secure an equivalent amount of improved public use space off-site. The amount of any payment accepted for public facilities and amenities must be not less than the cost of constructing an equal amount of the public facilities and amenities on-site. The Planning Board must issue regulations to implement this section.

(b) Any payment must be submitted to the Planning Board within 30 days after any building permit for the applicable development is issued.

(c) Any funds received instead of on-site public use space must be used to implement:

(1) any public use space and improvement to that space identified in the applicable master plan or sector plan, or if such public use spaces are fully funded or not identified then;

(2) other space and improvements to that space that the Planning Board finds to be consistent with to the goals of the applicable master plan or sector plan.

(d) Any funds received instead of on-site facilities and amenities must be used to implement:

(1) any public facilities and amenities identified in the applicable master plan or sector plan, or if such facilities are fully funded or not identified then;

(2) other space or improvement that the Planning Board finds consistent with the goals of the applicable master plan or sector plan.

(e) Any funds received under this Section may be used by the Planning Board to:

(1) repay the Advanced Land Acquisition Fund for buying land used for a park;

(2) fund a new capital improvement project; or

(3) fund an expansion or completion of an existing capital improvement project.

(f) If a specific improvement is funded by a payment under this Section, but is not fully funded by the initial payment, any future payments made by any development in the same master or sector plan area must be allocated to fund that improvement until the improvement is fully funded.

* * *

59-D-2.42. Findings required for approval.

[The fact that] Although an application [complies] may comply with all of the specific requirements and intent of the applicable zone does not create a presumption that the application must be approved. The Planning Board [can] may approve, or approve subject to modifications, an application only if it finds that [the proposed development meets all of the following requirements]:

* * *

224 (b) [It] The application would [conform to] be consistent with the applicable
225 sector plan or urban renewal plan.

226 * * *

227 (c) Because of its location, size, intensity, design, operational characteristics and
228 staging, [it] the application would be compatible with, and not detrimental
229 to, existing or potential development in the general neighborhood.

230 (d) [It] The application would not overburden existing public services nor those
231 programmed for availability concurrently with each stage of construction
232 and, if located [within] in a transportation management district designated
233 under [chapter] Chapter 42A[, article II], is subject to a traffic mitigation
234 agreement that meets all the applicable requirements [of that article].

235 (e) [It] The application would be more efficient and desirable than could be
236 accomplished by the use of the standard method of development.

237 (f) [It] The application would include moderately priced dwelling units in
238 accordance with [chapter] Chapter 25A [of this Code], if the requirements of
239 that chapter apply.

240 (g) When a project plan includes more than one lot under common ownership,
241 or is a single lot containing two or more CBD zones, and [is shown to]
242 would transfer public open space or development density from one lot to
243 another, or transfer densities within a lot with two or more CBD zones,
244 [pursuant] under [to the special standards of either section] Section 59-C-
245 6.2351 or 59-C-6.2352 [(whichever is applicable),] the Planning Board may
246 approve the project plan [may be approved by the planning board based on
247 the following findings] only if :

248 * * *

249 (3) The project will result in an overall land use configuration that is
250 significantly superior in meeting the goals of the applicable sector

plan and the zone, than what [to that which] could [otherwise] be achieved without the proposed transfers.

* * *

(j) When the Planning Board allows any public use space, or public facilities and amenities to be provided off-site, the Planning Board must find that the space or improvement :

(1) is consistent with the goals of the applicable master or sector plan; and

(2) serves the public interest better than providing the public use space or public facilities and amenities on-site.

59-D-2.43 Basis for consideration.

In reaching its determination on an application for the optional method of development [an] and in making the required findings, the [planning board] Planning Board must consider [the following]:

* * *

(b) Whether the open spaces proposed, including developed open space, are sized and located to provide [of such size and location as to serve as] convenient areas for recreation, relaxation and social activities for the residents and patrons of the development. Open spaces should be [and are so] planned, designed, and situated [as] to [function as necessary] provide sufficient physical and aesthetic open areas among and between individual structures and groups of structures [, and whether]. The proposed [the] setbacks, yards, and related walkways must be wide enough and [are so] located [and of sufficient dimensions] to provide [for] adequate light, air, pedestrian circulation and necessary vehicular access.

(c) Whether the vehicular circulation system, including access and off-street parking and loading, is [so] designed to provide an efficient, safe and convenient transportation system.

(d) Whether the proposed development contributes to the overall pedestrian circulation system. Pedestrian walkways must :

(1) be [is so] located, designed and sized [of sufficient size as] to conveniently handle pedestrian traffic efficiently and without congestion;

(2) [the extent to which the pedestrian circulation system is] be separated from vehicular roadways and designed to be [so as to be] safe, pleasing, and efficient for movement of pedestrians; and

(3) contribute to a network of [whether the pedestrian circulation system provides] efficient, convenient, and adequate pedestrian linkages in the area of the development, including linkages among residential areas, open spaces, recreational areas, commercial and employment areas, and public facilities.

* * *

(j) Payment of a fee acceptable to the Planning Board may satisfy all or some of the requirements for any public use space, or public facilities and amenities under the requirements established elsewhere in this Section.

Sec. 4. Effective date. This ordinance takes effect 20 days after the date of Council adoption.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council